

House Bill 2615

Sponsored by Representative SCHAUFLEER (at the request of Oregon Bankers Association) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes financial institutions to swipe information from individual's driver license, driver permit or identification card when establishing or maintaining contract or account or providing goods or services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the privacy of identification documents; amending ORS 807.745 and 807.750; and declar-
3 ing an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 807.745 is amended to read:

6 807.745. The Legislative Assembly finds that:

7 (1) Oregon recognizes the importance of protecting the confidentiality and privacy of an
8 individual's personal information contained in driver licenses, driver permits and identification
9 cards.

10 (2) Machine-readable features found on driver licenses, driver permits and identification cards
11 are intended to facilitate verification of age or identity, not to facilitate **the unrestricted** collection
12 of personal information about individuals nor to facilitate the **unrestricted** creation of private da-
13 tabases of transactional information associated with those individuals.

14 (3) Easy access to the information found on driver licenses, driver permits and identification
15 cards facilitates the crime of identity theft, which is a major concern in Oregon.

16 **SECTION 2.** ORS 807.750 is amended to read:

17 807.750. (1) As used in this section:

18 (a) "Driver license" means a license or permit issued by this state or any other jurisdiction as
19 evidence of a grant of driving privileges.

20 **(b) "Financial institution" has the meaning given that term in ORS 706.008.**

21 *[(b)]* **(c)** "Identification card" means the card issued under ORS 807.400 or a comparable pro-
22 vision in another state.

23 *[(c)]* **(d)** "Personal information" means an individual's name, address, date of birth, photograph,
24 fingerprint, biometric data, driver license number, identification card number or any other unique
25 personal identifier or number.

26 *[(d)]* **(e)** "Private entity" means any nongovernmental entity, such as a corporation, partnership,
27 company or nonprofit organization, any other legal entity or any natural person.

28 *[(e)]* **(f)** "Swipe" means the act of passing a driver license or identification card through a device
29 that is capable of deciphering, in an electronically readable format, the information electronically
30 encoded in a magnetic strip or bar code on the driver license or identification card.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (2) Except as provided in subsection (6) of this section, a private entity may not swipe an
 2 individual's driver license or identification card, except for the following purposes:

3 (a) To verify the authenticity of a driver license or identification card or to verify the identity
 4 of the individual if the individual pays for a good or service with a method other than cash, returns
 5 an item or requests a refund.

6 (b) To verify the individual's age when providing an age-restricted good or service to any person
 7 about whom there is any reasonable doubt of the person's having reached 21 years of age.

8 (c) To prevent fraud or other criminal activity if an individual returns an item or requests a
 9 refund and the private entity uses a fraud prevention service company or system.

10 (d) To transmit information to a check services company for the purpose of approving negotiable
 11 instruments, electronic funds transfers or similar methods of payment.

12 (3) A private entity that swipes an individual's driver license or identification card under sub-
 13 section (2)(a) or (b) of this section may not store, sell or share personal information collected from
 14 swiping the driver license or identification card.

15 (4) A private entity that swipes an individual's driver license or identification card under sub-
 16 section (2)(c) or (d) of this section may store or share the following information collected from
 17 swiping an individual's driver license or identification card for the purpose of preventing fraud or
 18 other criminal activity against the private entity:

19 (a) Name;

20 (b) Address;

21 (c) Date of birth; and

22 (d) Driver license number or identification card number.

23 (5)(a) A person other than an entity regulated by the federal Fair Credit Reporting Act, 15
 24 U.S.C. 1681 et seq., who receives personal information from a private entity under subsection (4) of
 25 this section may use the personal information received only to prevent fraud or other criminal ac-
 26 tivity against the private entity that provided the personal information.

27 (b) A person who is regulated by the federal Fair Credit Reporting Act and who receives per-
 28 sonal information from a private entity under subsection (4) of this section may use or provide the
 29 personal information received only to effect, administer or enforce a transaction or prevent fraud
 30 or other criminal activity, if the person provides or receives personal information under contract
 31 from the private entity.

32 (6)(a) Subject to the provisions of this subsection, a private entity that is a commercial radio
 33 service provider that provides service nationally and that is subject to the Telephone Records and
 34 Privacy Protection Act of 2006 (18 U.S.C. 1039) **or a private entity that is a financial institution**
 35 may swipe an individual's driver license or identification card if the entity obtains permission from
 36 the individual to swipe the individual's driver license or identification card.

37 (b) The private entity may swipe the individual's driver license or identification card only for
 38 the purpose of establishing or maintaining a contract **or account** between the private entity and the
 39 individual **or providing goods or services to the individual**. Information collected by swiping an
 40 individual's driver license or identification card for the establishment or maintenance of a contract
 41 **or account or the provision of goods or services** shall be limited to the following information
 42 from the individual:

43 (A) Name;

44 (B) Address;

45 (C) Date of birth; and

1 (D) Driver license number or identification card number.

2 (c) If the individual does not want the private entity to swipe the individual's driver license or
3 identification card, the private entity may manually collect the following information from the indi-
4 vidual:

5 (A) Name;

6 (B) Address;

7 (C) Date of birth; and

8 (D) Driver license number or identification card number.

9 (d) The private entity may not withhold the provision of goods or services solely as a result of
10 the individual requesting the collection of the following information from the individual through
11 manual means:

12 (A) Name;

13 (B) Address;

14 (C) Date of birth; and

15 (D) Driver license number or identification card number.

16 (7) A governmental entity may swipe an individual's driver license or identification card only
17 if:

18 (a) The individual knowingly makes the driver license or identification card available to the
19 governmental entity;

20 (b) The governmental entity lawfully confiscates the driver license or identification card;

21 (c) The governmental entity is providing emergency assistance to the individual who is uncon-
22 scious or otherwise unable to make the driver license or identification card available; or

23 (d) A court rule requires swiping of the driver license or identification card to facilitate accu-
24 rate linking of court records pertaining to the individual.

25 (8) In addition to any other remedy provided by law, an individual may bring an action to re-
26 cover actual damages or \$1,000, whichever is greater, and to obtain equitable relief, if equitable
27 relief is available, against an entity that swipes, stores, shares, sells or otherwise uses the
28 individual's personal information in violation of this section. A court shall award a prevailing
29 plaintiff reasonable costs and attorney fees. If a court finds that a violation of this section was
30 willful or knowing, the court may increase the amount of the award to no more than three times the
31 amount otherwise available.

32 (9) Any waiver of a provision of this section is contrary to public policy and is void and
33 unenforceable.

34 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
36 **on its passage.**

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